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Before the
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Reallocation and Service Rules for)
the 698-746 MHz Spectrum Band)
(Television Channels 52-59))

GN Docket No. 01-74 /

To: The Commission

**PETITION FOR RECONSIDERATION
OF SPECTRUM EXCHANGE GROUP, LLC
AND ALLEN & COMPANY INCORPORATED**

Spectrum Exchange Group, LLC and Allen & Company Incorporated ("Spectrum Exchange/Allen"), pursuant to Section 1.429(a) of the Commission's rules, 47 C.F.R. § 1.429(a), hereby submit this Petition for Reconsideration of the Commission's Report and Order reallocating and establishing service rules for the 698-746 MHz Band ("Lower 700 MHz Band").¹ Specifically, because the *Report and Order's* geographic area licensing arrangement and band plan for the Lower 700 MHz Band can be improved upon in furtherance of the Commission's public interest objectives, Spectrum Exchange/Allen urge the Commission to adopt one of the alternate proposals described herein.

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¹ *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), Report and Order*, FCC 01-364, GN Docket No. 01-74 (rel. January 18, 2002) ("*Report and Order*").

I. BACKGROUND/INTRODUCTION

The *Report and Order* establishes a band plan that divides the Lower 700 MHz Band into three 12 MHz blocks (with each block consisting of a pair of 6 MHz segments), and two 6 MHz blocks of unpaired spectrum.² Specifically, as depicted below, Blocks A, B and C each consist of paired 6 MHz segments, and Blocks D and E each consist of unpaired 6 MHz segments. In addition, the *Report and Order* provides a geographic area licensing arrangement that Blocks A, B, D and E will be licensed in each of the six Economic Area Groups (“EAGs”), and Block C will be licensed in each of the 734 Metropolitan Statistical Areas (“MSAs”) and Rural Statistical Areas (“RSAs”, or together, “MSA/RSAs”).

Lower 700 MHz Band Plan and Geographic Area Licensing Arrangement³

Block				D 6 MHz	E 6 MHz			
Freq./MHz	698-704	704-710	710-716	716-722	722-728	728-734	734-740	740-746
TV Ch.	52	53	54	55	56	57	58	59
License Area	EAG	EAG	MSA/ RSA	EAG	EAG	EAG	EAG	MSA/ RSA

The Commission had three objectives when it prescribed the area designations and bandwidth assignments for the Lower 700 MHz Band. Consistent with Section 309(j)(4) of the Communications Act, as amended (the “Act”), the Commission sought to promote: “(a) equitable

² *Report and Order* at ¶ 76.

³ *Id.* at ¶¶ 76, 90.

distribution of licenses and services among geographic areas, (b) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, (c) investment in, and rapid deployment of, new technologies and services.”⁴ Spectrum Exchange/Allen respectfully submit that these laudable goals for the Lower 700 MHz Band are not well served by the geographic area licensing arrangement and band plan adopted in the *Report and Order*. In addition, the licensing of the 740-746 MHz block according to MSA/RSA boundaries will have the unintended consequence of diminishing the value of the 747-762 and 777-792 MHz band (“Upper 700 MHz Band”). The Commission’s objectives for both the Lower and Upper 700 MHz Bands can be better advanced by adopting an alternative arrangement in which the 740-746 MHz block is licensed according to EAG boundaries and either the 728-734 MHz block or 734-740 MHz block is licensed according to MSA/RSA boundaries.

II. DISADVANTAGES OF COMMISSION’S LOWER 700 MHz GEOGRAPHIC AREA LICENSING ARRANGEMENT AND BAND PLAN

Under the geographic area licensing arrangement and band plan adopted in the *Report and Order*, Block C (Channels 54 and 59) is to be licensed according to MSA/RSA boundaries. Channel 59 is almost directly adjacent to the Upper 700 MHz Band, which is to be licensed according to EAG boundaries. Channel 59 — as well as Channels 60-69 — needs to be cleared in order to make effective use of the Upper 700 MHz Band, due to adjacent channel protection.

Licensing Block C according to MSA/RSA boundaries may create an enormous and unnecessary free-rider problem. Lower Band Block C (Channels 54 and 59) and Upper Band Block C (Channels 60 and 65) are both encumbered by incumbent analog and DTV television

⁴ *Id.* at ¶ 5, quoting 47 U.S.C. § 309(j)(4).

broadcast stations on Channels 59 and 60.⁵ The licensee of each block would benefit substantially from clearing incumbent broadcasters from Channels 59 and 60. Yet each would benefit more if *another* licensee paid the compensation needed to clear incumbent broadcasters from Channels 59 and 60. This free-rider problem is minimized if Lower Band Block C is licensed according to EAG boundaries. Since EAG regions are quite large, each Channel 59 and 60 television station would then encumber one Upper Band Block C license and one Lower Band Block C license, with only a handful of exceptions. By contrast, if Lower Band Block C is licensed according to MSA/RSA boundaries, large numbers of Channel 59 and 60 television stations will encumber one Upper Band Block C license and *two or more* Lower Band Block C licenses. This is likely to exacerbate the free-rider problem in clearing, consequently slowing or disabling negotiations to clear the spectrum. Therefore, it can be expected to reduce the value of both the Upper Band Block C and Lower Band Block C spectrum.

For example, a television station such as WBAL-DT Channel 59 in Baltimore may potentially encumber MSA008 (Washington, DC), MSA014 (Baltimore, MD), MSA069 (Wilmington, DE) and MSA257 (Hagerstown, MD). Television stations such as KCSM-TV Channel 60 and KCSM-DT Channel 59 in San Mateo, CA may potentially encumber MSA007 (San Francisco – Oakland, CA), MSA027 (San Jose, CA), MSA111 (Vallejo-Fairfield-Napa, CA) and MSA123 (Santa Rosa-Petaluma, CA).

Interchanging the geographic allocation bases of the Lower Band Block C and Lower Band Block B can reduce this defect in the plan, so that instead Channels 53 and 58 are licensed according to MSA/RSA boundaries. While there is still a heightened free-rider problem for

⁵ Furthermore, Upper Band Block D (Channels 61-62 and 66-67) is encumbered by incumbent analog and DTV television broadcast stations on Channel 60.

clearing Channel 59 television stations (due to adjacent channel protection), the free-rider problem for clearing Channel 60 television stations is greatly reduced.

Interchanging the geographic allocation bases of the Lower Band Block C and Lower Band Block A can eliminate this defect in the plan, so that instead Channels 52 and 57 are licensed according to MSA/RSA boundaries. The free-rider problem for clearing Channels 59 and 60 television stations are both greatly reduced.

One might argue that such an interchange of geographic allocations is simply moving the free-rider problem from one part of the band to another. However, this is not at all the case. First, the Commission has adopted rules facilitating voluntary transactions for clearing Channels 59-69, but the Commission has not extended these rules to facilitate the clearing of Channels 52-58. So, in the lower channels, there may not be any voluntary transactions to impede. Second, the Wireless Bureau has apparently adopted the view that the Upper 700 MHz Band is of significantly higher value than the Lower 700 MHz Band. As we noted in our comments and reply comments in the matter of DA 02-200 filed last month, there is a 4:1 ratio between the minimum opening bid of \$24 million per MHz (entire U.S.) for the Upper Band and \$6 million per MHz for the Lower Band. If some valuable transaction must be delayed by a free rider problem, it is better to delay relatively low-value transactions rather than relatively high-value transactions.

At the same time, it should be recognized that the Lower and Upper 700 MHz Band auctions are likely to attract many of the same participants. Participants in the Upper 700 MHz Band auction, particularly those bidding on Upper 700 MHz Block C (747-752 MHz), undoubtedly realize that in order to fully utilize this spectrum for new technologies and services, it will be necessary to clear incumbent co-channel and adjacent channel television licensees. At

a minimum, in order to make full use of Upper 700 MHz Block C, broadcasters will need to be cleared from Channels 59, 60 and 61. Thus, any party interested in acquiring a license for Upper 700 MHz Block C will have a strong incentive to acquire a license for Channel 59, since many of the same incumbent broadcasters will need to be cleared to make both channels usable.

The Upper 700 MHz Band may attract the interest of the nation's largest wireless companies. The Commission designated the relatively small MSA/RSA license areas for one of the 12 MHz blocks in the Lower 700 MHz Band so as to make this block suitable for use by smaller businesses. However, by placing the MSA/RSA-licensed Lower 700 MHz Block C next to the EAG-licensed Upper 700 MHz Block C, the Commission has created an untenable situation for small businesses wishing to compete in the Lower 700 MHz Band auction.

The current plan for the Lower 700 MHz Band may thus pit large bidders against small bidders for control of Channel 59, the likely outcome of which is obvious – large carriers would establish substantial footprints on Channel 59 at the expense of smaller carriers, rural telephone companies, and businesses owned by members of minority groups and women.⁶ This scenario may be mitigated or entirely avoided by simply interchanging the geographic area type of Lower 700 MHz Band Block C with that of either Block A or Block B. In sum, if the Commission does not reconsider its plan for the Lower 700 MHz Band, particularly with respect to the licensing of Channel 59, it will also impede the equitable distribution of licenses and services among geographic areas, foreclose opportunities for small businesses, and discourage investment in, and rapid deployment of, new technologies and services in the Lower 700 MHz Band.

⁶ Due to geographic synergies among licenses, large carriers may aggressively compete even for Channel 59 RSA licenses, particularly where they plan to make substantial investments in Channel 59 MSA licenses, though it is unlikely that rural areas would be among the first to be built out.

The *Report and Order* is silent as to why the Commission decided to license Channel 59 on an MSA/RSA basis. Channel 59 does not appear to be comparatively more suitable for MSA/RSA licensing; nor do the frequencies associated with Blocks A and B appear to be comparatively less suitable. The *Report and Order* recognizes the public interest benefit of preserving spectrum opportunities for small businesses and simply concludes that Block C (including Channel 59) will be licensed on an MSA/RSA basis to advance this objective.⁷ Spectrum Exchange/Allen submit that this conclusion will diminish the value of the Upper and Lower 700 MHz Band licenses, as well as impede the equitable distribution of licenses and services among geographic areas and foreclose opportunities for small businesses, and urge the Commission to reconsider this decision.

III. THE COMMISSION SHOULD REVISE THE LOWER 700 MHz GEOGRAPHIC AREA LICENSING ARRANGEMENT AND/OR BAND PLAN

Spectrum Exchange/Allen submit that the Commission's objectives could be better served by reorganizing the geographic area licensing arrangement and/or band plan.⁸ Specifically, Spectrum Exchange/Allen respectfully request that the Commission consider adopting one of three alternative proposals ("Alternative Proposals"), listed below in descending order of preference.

⁷ *Report and Order* at n. 258.

⁸ There is precedent for the Commission changing a band plan upon reconsideration. See *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Third Report and Order and Order on Reconsideration, 16 FCC Rcd 9713 (2001)(On reconsideration, FCC adopts revised channel plan for narrowband PCS reserve spectrum and other remaining spectrum); *Amendment of the Commission's Rules to Establish New Personal Communications Services*, Memorandum Opinion and Order, 9 FCC Rcd 4957 (1994)(On reconsideration, FCC adopts revised band plan to reallocate 120 MHz of spectrum in the lower portion of the 2 GHz band).

Alternative Proposal One

Blocks				D 6 MHz	E 6 MHz			
Freq/MHz	698-704	704-710	710-716	716-722	722-728	728-734	734-740	740-746
TV Ch	52	53	54	55	56	57	58	59
License Area	MSA/ RSA	EAG	EAG	EAG	EAG	MSA/ RSA	EAG	EAG

Alternative Proposal Two

Blocks	D 6 MHz				E 6 MHz			
Freq/MHz	698-704	704-710	710-716	716-722	722-728	728-734	734-740	740-746
TV Ch	52	53	54	55	56	57	58	59
License Area	EAG	MSA/ RSA	EAG	EAG	EAG	MSA/ RSA	EAG	EAG

Alternative Proposal Three

Blocks				D 6 MHz	E 6 MHz			
Freq/MHz	698-704	704-710	710-716	716-722	722-728	728-734	734-740	740-746
TV Ch	52	53	54	55	56	57	58	59
License Area	EAG	MSA/ RSA	EAG	EAG	EAG	EAG	MSA/ RSA	EAG

Each of the Alternative Proposals listed above moves the block licensed according to MSA/RSA boundaries away from Channel 59. Alternative Proposal One licenses Block A, rather than Block C, according to MSA/RSA boundaries. Alternative Proposal Three licenses Block B, rather than Block C, according to MSA/RSA boundaries. Alternative Proposal Two reduces the separation between the paired channels to 24 MHz, and then licenses Block A, rather than Block C, according to MSA/RSA boundaries.

Thus, Alternative Proposals One and Two have Channel 57, rather than Channel 59, licensed according to MSA/RSA boundaries. Alternative Proposal Three has Channel 58, rather than Channel 59, licensed according to MSA/RSA boundaries. As a result, Spectrum Exchange/Allen submit that each of these proposals has certain advantages, and better advances the Commission's stated objectives, than does the plan adopted in the *Report and Order*.

A. The Alternative Proposals Will Preserve the Equitable Distribution of Licenses and Services Among Geographic Areas

None of the Alternative Proposals reduces the number of licenses or geographic areas to be auctioned in the Lower 700 MHz Band. Rather, each of the Alternative Proposals simply rearranges the channel blocks devised by the Commission with the intent of realizing a more efficient and equitable outcome. Other than exchanging some of the channel block assignments in order to relocate the MSA/RSA partitions away from the top of the band, Alternative Proposals One and Three essentially duplicate the Commission's geographic area licensing arrangement and band plan. Alternative Proposal Two has the same objective, but contemplates a band reorganization resulting in the segregation of the two unpaired channel blocks in non-contiguous portions of the band. While we acknowledge that the Commission located the two, unpaired channel blocks in the center of the band in order to provide 30 MHz of separation between the upper and lower segments of Channel Blocks A, B, and C, and in order to provide

spectrum aggregation opportunities for carriers needing more than 6 MHz of contiguous spectrum,⁹ Spectrum Exchange/Allen ask that the Commission reconsider its conclusions in light of a countervailing concern.

As the Commission understands, Channel 52 is immediately adjacent to the core television spectrum (Television Channels 2-51). Any licensee winning a channel block assigned to Channel 52 is likely to have particularly difficult adjacent channel interference issues within major metropolitan areas. Rather than encumbering one of the comparatively more valuable paired blocks with a Channel 52 assignment, the Commission should consider minimizing the particular interference issues associated with Channel 52 by assigning one of the comparatively less valuable, unpaired blocks to that position instead.¹⁰ It may be useful for the Commission to open a brief window to solicit public comment to determine the extent of demand for unpaired, contiguous spectrum, and whether 30 MHz of separation between the upper and lower segments of the three paired channel blocks, as opposed to 24 MHz of separation, is absolutely necessary.

B. The Alternative Proposals Will Better Advance Economic Opportunity for a Wide Variety of Applicants

Each of the Alternative Proposals will provide smaller carriers, particularly those seeking to provide service in rural areas, with a better chance to compete effectively in the auction. As indicated above, the geographic area licensing arrangement and band plan adopted in the *Report and Order* will have the unintended consequence of pitting large and small carriers against one

⁹ *Report and Order* at ¶ 79.

¹⁰ Experience in the European 3G auctions demonstrates that unpaired spectrum is far less valuable than paired spectrum. For example, in the August 2000 German 3G auction, 120 MHz of paired spectrum sold for 98.8 billion Deutsche Mark (i.e., 0.823 billion DM/MHz), while 25 MHz of unpaired spectrum sold for 0.56 billion Deutsche Mark (i.e., 0.022 billion DM/MHz). Thus, the price ratio suggests that paired spectrum was viewed as 37 times more valuable than the same bandwidth of unpaired spectrum.

another for control of Channel 59. Larger carriers will be attracted to that spectrum in order to realize the benefits of clearing Upper 700 MHz Channel Block C, while smaller carriers will be attracted to Channel 59 because it will be licensed on an MSA/RSA basis. Absent adoption of one of the Alternative Proposals, Upper 700 MHz Band licensees are likely to aggressively compete against smaller carriers for Channel 59 if, for no other reason, to prevent Lower 700 MHz Band licensees from free-riding on their efforts to clear the Upper 700 MHz Band. The Commission's plan sets the stage for unfairly externalizing the significant costs associated with clearing Channel 59 on the Upper 700 MHz Band licensees – an eventuality to which Upper 700 MHz Band potential licensees may respond by acquiring Lower Band Block C licenses.

Adoption of any of the Alternative Proposals would reduce the incentive for large carriers to bid for the MSA and RSA licenses, since the licenses allocated according to MSA/RSA boundaries would be moved away from the Upper 700 MHz Band. Specifically, two of the Alternative Proposals contemplate licensing Channel 57 on an MSA/RSA basis, and the third Alternative Proposal contemplates licensing Channel 58 on an MSA/RSA basis. The Alternative Proposals will thus better advance the objectives of Section 309(j) of the Act by creating additional opportunities for smaller carriers, rural telephone companies, and businesses owned by minorities and women to develop innovative products and services suited to the particularized needs of individual communities.

C. The Alternative Proposals Will Better Encourage Investment in, and Rapid Deployment of, New Technologies and Services

The Commission declined to adopt any formal policies or procedures to expedite the clearing of the Lower 700 MHz Band. Instead, the Commission will look to Lower 700 MHz Band licensees and incumbent broadcasters to develop new and innovative band clearing

approaches.^{11,12} By mitigating the free-rider problem introduced by the Commission’s plan, the Alternative Proposals increase the probability that both the Upper 700 MHz Band and the Lower 700 MHz Band Block C are cleared and put to efficient use. By moving the portion of the Lower 700 MHz Band slated to be licensed according to MSA/RSA boundaries away from the Upper 700 MHz Band, the Alternative Proposals also increase the probability that small carriers and rural telecommunications providers will be able to put the Lower 700 MHz MSA/RSA licenses to efficient use. By adopting one of the Alternative Proposals, the Commission would encourage investment in, and rapid deployment of, new technologies and services such as 3G wireless in all of the 700 MHz Band, thereby serving the public interest.

¹¹ *Report and Order* at ¶184.

¹² Broadcast stations clearing out of the Upper 700 MHz Band may wish to relocate to channels 52-58 for some period of time, thus affecting the level of encumbrance in these channels. Spectrum Exchange/Allen repeat and support the request made by the Spectrum Clearing Alliance that the Commission clarify that its prohibition on “new” analog broadcast operations in Channels 52-59 does not extend to stations relocating from Channels 59-69. *See* Petition for Clarification or Reconsideration, filed by Paxson Communications Corporation on behalf of the Spectrum Clearing Alliance on February 5, 2002.

For the reasons set forth above, Spectrum Exchange Group, LLC and Allen & Company Incorporated respectfully urge the Commission to reconsider, along the lines set forth above, its *Report and Order* reallocating and establishing service rules for the Lower 700 MHz Band.

Respectfully submitted,

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March 8, 2002

CERTIFICATE OF SERVICE

I, Vernell V. Garey, hereby certify that copies of the foregoing Petition for Reconsideration have been served this 8th day of March, 2002, by hand-delivery, to the persons on the attached service list:

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